

**RESPONSE TO MOTION TO  
HAVE LIABILITY INSURER  
APPEAR REMOTELY**

Boyne USA Inc. (“Boyne”) asked Plaintiffs Cottonwood Environmental Law Center, Gallatin Wildlife Association, and Montana Rivers (“Plaintiffs”) if they were opposed to its insurance representative appearing at the settlement conference remotely because “coverage under the policy at issue has not yet been implicated[.]” Exhibit 1. In response, Plaintiffs asked Boyne, “[t]o settle this case, we’re going to need to recover attorney/expert fees. How does Boyne intend to pay for those?” Exhibit 1. McIntosh/Boyne didn’t respond, except to say, “[p]lease let us know if you will pay for carbon offsets for the insurer’s flight to/from Montana.” Exhibit 1.

Boyne failed to mention that before it filed this motion, it was provided with a proposed consent decree that far exceeds the \$100,000 insurance deductible and did not include attorney fees, expert witness fees, or costs, which also exceed \$100,000. Boyne is liable for civil penalties of up to \$56,460/day for a period of five years before this lawsuit was filed for knowingly irrigating its golf course without first considering the nitrogen concentrations in the treated sewage. 40 C.F.R. §19.4; *Sierra Club v. Chevron U.S.A., Inc.*, 834 F.2d 1517, 1522 (9th Cir. 1987) (holding the five-year statute of limitations of 28 U.S.C. § 2462 applies to CWA citizen suits). Boyne’s insurance is implicated and its representative should be present in person.

Respectfully submitted this 14<sup>th</sup> day of July, 2022.

/s/ John Meyer  
JOHN MEYER

*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record by the means designated below this 14th day of July 2022.

- ☐ U.S. Mail
- ☐ Hand Delivery
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